

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL )  
2 DEVELOPMENT PERMIT ISSUED BY )  
3 SNOHOMISH COUNTY TO EDWARD W. HAYES )  
4 )  
5 GEORGE YOUNT and STATE OF )  
6 WASHINGTON, DEPARTMENT OF ECOLOGY )  
7 and SLADE GORTON, ATTORNEY GENERAL, )  
8 )  
9 Appellants, )  
10 )  
11 vs. )  
12 )  
13 SNOHOMISH COUNTY and EDWARD W. HAYES, )  
14 )  
15 Respondents. )  
16 )  
17 )  
18 )

SHB Nos. 108 and 112

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

10 THESE MATTERS being consolidated requests for review to the issuance  
11 of a conditional shoreline management substantial development permit;  
12 having come on regularly for hearing before the Shorelines Hearings Board  
13 on the 6, 7 and 8th days of March, 1974, at Everett, Washington; and  
14 appellant, Washington State Department of Ecology and Attorney General,  
15 appearing through its attorney, Thomas C. Evans, Assistant Attorney General  
16 appellant, George Yount, appearing through his attorney, J. Grahame Bell;  
17 respondent, Snohomish County, appearing through Darrell Syferd, Deputy  
18 Prosecuting Attorney; and respondent, Edward W. Hayes, appearing through

1 his attorney, Bill Baker; and Board members present at the hearing  
2 being W. A. Gissberg (presiding), Mary Ellen McCaffree, Arden A. Olson  
3 and Robert F. Hintz; and the Board having considered the sworn testimony,  
4 exhibits, post-hearing arguments, records and files herein and having  
5 entered on the 24th day of April, 1974, its proposed Findings of Fact,  
6 Conclusions of Law and Order, and the Board having served said proposed  
7 Findings, Conclusions and Order upon all parties herein by certified  
8 mail, return receipt requested and twenty days having elapsed from said  
9 service; and

10 The Board having received no exceptions to said proposed Findings,  
11 Conclusions and Order; and the Board being fully advised in the premises;  
12 now therefore,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
14 Findings of Fact, Conclusions of Law and Order, dated the 24th day of  
15 April, 1974, and incorporated by this reference herein and attached  
16 hereto as Exhibit A, are adopted and hereby entered as the Board's  
17 Final Findings of Fact, Conclusions of Law and Order herein.

18 DONE at Lacey, Washington, this 22nd day of May, 1974.

19 SHORELINES HEARINGS BOARD

20  
21 Mary Ellen McCaffree  
MARY ELLEN McCAFFREE, Member

22 Arden A. Olson  
23 ARDEN A. OLSON, Member

24 Robert F. Hintz  
25 ROBERT F. HINTZ, Member

26 FINAL FINDINGS OF FACT,  
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W. A. Gissberg  
W. A. GISSBERG, Member

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vs. )

7 SNOHOMISH COUNTY and EDWARD W. HAYES, )

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FINDINGS OF FACT,  
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9  
10 A hearing on the consolidated above-numbered requests for review  
11 to the issuance of a conditional shoreline management substantial  
12 development permit was held in Everett, Washington on March 6, 7 and 8,  
13 1974 before Board members, W. A. Gissberg (presiding), Mary Ellen  
14 McCaffree, Arden A. Olson and Robert F. Hintz.

15 Appellants Washington State Department of Ecology and Attorney  
16 General appeared through Thomas C. Evans, Assistant Attorney General;  
17 appellant George Yount appeared through his attorney, J. Grahame Bell;  
18 Respondent Snohomish County appeared through Darrell Syferd, Deputy

EXHIBIT A

1 Prosecuting Attorney; respondent Edward W. Hayes appeared through h  
2 attorney Bill Baker.

3 Having heard the testimony and considered the exhibits and post-  
4 hearing arguments, and being fully advised, the Board makes and enters  
5 these

6 FINDINGS OF FACT

7 I.

8 That any Conclusion of Law hereinafter recited which should be  
9 deemed a Finding of Fact is hereby adopted as such.

10 II.

11 Edward W. Hayes and others own a combined unimproved land area  
12 (site) of 93 acres. On March 10, 1970 he applied for a permit  
13 under RCW 86.16 (flood control zones) to construct and maintain  
14 a "sanitary landfill" on the site. Shortly thereafter he was granted  
15 a flood control permit to construct and maintain a "solid waste  
16 disposal site" (App. Ex. 70). At least since then he has utilized a  
17 portion of the site for that purpose and has now filled ten acres to  
18 a nine foot elevation, using approximately 100,000 yards of solid  
19 waste in the process. Apparently only nonputrescible wastes have been  
20 placed upon the site and much of it consists of discarded wood products  
21 and debris resulting from construction demolition. That portion of the  
22 site east of Interstate Highway 5 used as a disposal area is an eyesore  
23 and can best be described in its present condition as having been  
24 esthetically molested.

25 III.

26 The site is located in Snohomish County between the northerly

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW

city limits of Everett and the southerly city limits of Marysville; its northerly boundary is Ebey Slough; its southerly boundary is Steamboat Slough; its westerly boundary is the Tulalip Indian Reservation. The site is bisected by Interstate Highway 5, old Highway 99 and railroad trackage and right of way, all of which were respectively constructed on elevated fill. The materials for the freeway construction were obtained from a borrow pit which was located on that portion of the site westerly of I-5.

Dikes were constructed around three sides of the property at about 1891 to protect the site and other property from water inundation by tide and the waters of Ebey and Steamboat Sloughs. The site was farmed until around 1959 at which time a break in the Ebey Slough dike occurred. Since then a portion of the site is covered daily by the tide water flowing through the breaks in the dike. That flow of salt water has scoured a channel from Ebey Slough into the portion of the site lying easterly of I-5.

#### IV.

Ebey and Steamboat Sloughs are portions of the Snohomish River, tributary to Puget Sound, and are shorelines of state-wide significance. According to the 1966 study of the Corp of Army Engineers, the site is within the 50 year flood plain. A more recent study by the Corps, the results of which are only tentative and subject to revision, leads to a finding that the site is not within the flood plain but that it is subject only to tidal flooding. At any event, the flood water storage of the site is insignificant and the filling of the site would not significantly affect the flood plain water storage

FINDINGS OF FACT,  
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1 capacity because the site is such a small part of the Snohomish River  
2 flood plain. .

3 V.

4 Respondent applied for a substantial development permit on  
5 March 26, 1973. Simultaneously he filed his "environmental impact  
6 statement" (App. Ex. 55). His shoreline management application sought  
7 a permit for a solid waste landfill and "continue to expand trans-  
8 shipping capabilities and heavy industrial use." His publication  
9 of the notice of hearing on the application stated the proposed  
10 development to be a "marine industrial area". The "final environmental  
11 impact statement" (App. Ex. 57) describes the proposed permit to be  
12 for "landfilling, channel extension, two docks, dredging, a future  
13 railroad spur and construction of a steel fabrication facility". A  
14 site plan and vicinity map was included in the material filed by  
15 respondent with his application.

16 VI.

17 The county commissioners, after a public hearing, approved a  
18 shoreline management substantial development permit "for operation of  
19 a solid waste landfill and marine industrial area", with the condition  
20 that "only nonputrescible wastes. . . be allowed" in the landfill.  
21 That condition was not expressed upon the face of the permit but is  
22 found in the resolution approving the granting of the application for  
23 a permit. The planning staff and commission had recommended disapproval  
24 of the application, but their findings and recommendations were  
25 considered and rejected by the county commissioners.

26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
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VII.

2 The site has been zoned heavy industrial since 1962. Immediately  
3 north and across Ebey Slough from the site there are three lumber  
4 mills and a boat marina and other highly urbanized facilities. A  
5 large area westerly of the site is now being used as a solid waste  
6 sanitary landfill in which Seattle's garbage is being dumped. Easterly  
7 of the site and within the planning jurisdiction of Snohomish County,  
8 there is no other land in the Snohomish River estuary which has been  
9 zoned heavy industrial.

VIII.

11 A solid waste landfill containing only nonputrescible wastes can  
12 cause leachates. The subsoil of the site is relatively impermeable, thus  
13 causing any leachates to move horizontally. There is no evidence that  
14 leachates from this site would have a deleterious effect on the adjacent  
15 waters.

IX.

17 Studies and projections by experts prove only that there is a  
18 divergence of opinion as to the need for additional industrial sites.

X.

20 The hundreds of acres of land in the estuary of the Snohomish River  
21 constitutes a fragile ecosystem. About one-half; i.e., 46 acres, of the  
22 site is a salt water marsh habitat. The dike contains a muskrat habitat.  
23 Although a filling of the site would mean a loss of a portion of the  
24 total estuary, the ecological or environmental impact of a fill would be  
25 insignificant. However, the cumulative effect of other such developments  
26 would cause irreversible damage to the ecosystem of the estuary at some

27 FINDINGS OF FACT  
CONCLUSIONS OF :

AND ORDER

1 unknown and unpredictable stage of development.

2 Wolf Bauer, recognized as an expert naturalist, engineer and  
3 geologist found that the area of the site which is located westerly of  
4 I-5 would be acceptable for a fill and industrial area, because that  
5 area has lost its appeal "environmentally." However, his opinion was  
6 that the 57 acres easterly of I-5 was beyond a natural planning  
7 boundary upon which further encroachment of the natural estuary conditio  
8 of the Snohomish River should not be allowed.

9 XI.

10 The site is not economically suitable for agricultural purposes and  
11 such a land use is not a viable option. The development plan proposed  
12 for the site does provide for the retention of the natural esthetic  
13 qualities of the existing dikes, but that proposal, although salutary,  
14 has not been made a condition of the permit.

15 XII.

16 The environmental impact statement does not consider the  
17 availability of alternate marine industrial sites.

18 XIII.

19 The substantial development permit was granted on September 10,  
20 1973. As of that date, there had been no adoption of goals and  
21 policies or other elements of the master programs either by the Planning  
22 Commission or the County Commissioners of Snohomish County for the  
23 shorelines therein. Thus, there was no ascertainable or recognizable  
24 master program as of the date of the issuance of the permit.

25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER



CONCLUSIONS OF LAW

I.

Any Finding of Fact, which should be deemed a Conclusion of Law is hereby adopted as such.

II.

The dispositive guideline in this case is that of the Department of Ecology found at WAC 173-16-060(14)(c). It provides:

"... (c) Fill materials should be of such quality that it will not cause problems of water quality. Shoreline areas are not to be considered for sanitary landfills or the disposal of solid waste." (emphasis supplies)

RCW 70.95.030(9) provides:

"'Solid waste' means all putrescible and nonputrescible solid and semisolid wastes including . . . industrial wastes, . . . demolition and construction wastes, . . . and discarded commodities."

We interpret the above guideline to mean and hold that it mandatorily prohibits the disposal of solid wastes within the shoreline areas.

III.

Not every landfill is prohibited by the guidelines, however. WAC 173-16-060(14) provides for and permits the approval of certain landfills which are of the type, location, design and effect therein described. We are concerned about establishing a precedent of allowing fills in that portion of the Snohomish River estuary which is within the planning jurisdiction of Snohomish County and at those places which would be an invasion of that part of the estuary easterly of I-5. However, the Order to be entered in this cause will not be precedence setting because

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AND ORDER

1 respondent's filling activity had lawfully commenced prior to the  
2 effective date of the Shoreline Management Act and had been lawfully  
3 continued for two years thereafter. The public generally, and respondent  
4 specifically, is faced with a situation where, if a permit be not granted  
5 the site will continue to be an eyesore. However, the granting of a  
6 permit for a fill on a portion of the site, but not using solid waste  
7 as a fill material, would be in the public interest and consistent with  
8 the policy section of the Shoreline Management Act and the guidelines  
9 if designed and constructed in accordance with WAC 173-16-060(14). In  
10 the ultimate development of a portion of the site, when filled, priority  
11 should be for a water-dependent use.

12 IV.

13 RCW 90.58.020 states that "industrial and commercial developments  
14 which are particularly dependent on their location on or use of the  
15 shorelines of the state" shall be given priority in those limited  
16 instances where "alterations of the natural conditions of the shorelines  
17 of the state" is allowed. Because the subject permit is too vague to  
18 ascertain, with the certainty required by this Board, what it authorizes,  
19 we are unable to determine the issues of this case relating to water-  
20 dependency. It is our view that a water-dependent commerce or industry,  
21 to which priority should be given, is one which cannot exist in any  
22 other location and is dependent on the water by reason of the intrinsic  
23 nature of its operations. A water-related industry or commerce is one  
24 which is not intrinsically dependent on a waterfront location but whose  
25 operation cannot occur economically without a shoreline location.

26 FINDINGS OF FACT,  
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V.

2 If local government issues a permit upon certain conditions, those  
3 conditions should appear on the permit itself or by reference stated  
4 therein and with the reference attached thereto. The failure of  
5 Snohomish County to issue permits in that form can only lead to further  
6 controversy and uncertainty not only to the public but to the permittee  
7 as well. The Board makes the same criticism of the subject matter of  
8 the permit. We are urged to find that the purpose and scope of the  
9 permit is to be found in the environmental impact statement. We refuse  
10 to do so. The permit itself should describe with particularity and  
11 certainty what is being authorized. The description on the subject  
12 permit as a "marine industrial area" does not meet our test when no  
13 further explanatory material is attached to or expressly made a part  
14 of the permit.

15 VI.

16 Our review of the question of whether the permit is consistent with  
17 the master program "so far as can be ascertained" (RCW 90.58.140  
18 (a)(iii)) is necessarily limited to the status of the master program as  
19 of the date of the issuance of the permit by the local government. At  
20 that time Snohomish County's master program was not ascertainable.

21 VII.

22 The specific permit which is the subject matter of this review  
23 should be vacated, but a permit should be granted in accordance with  
24 the principles set forth herein.

25 ORDER

26 The permit is vacated and the matter is remanded to Snohomish

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1 County for its reconsideration of the issuance of a permit which is  
2 in accordance with these Findings and Order and which is limited in  
3 area to only that part of the site which would cover over the existing  
4 solid waste landfill located easterly of I-5.

5 DATED this 24<sup>th</sup> day of April, 1974.

6 SHORELINES HEARINGS BOARD

7  
8 Mary Ellen McCaffree  
MARY ELLEN McCAFFREE, Member

9  
10 Arden A. Olson  
ARDEN A. OLSON, Member

11  
12 Robert F. Hintz  
13 ROBERT F. HINTZ, Member

14  
15 Having personally written the Findings of Fact and Conclusions  
16 of Law, I agree and concur with them. I also concur with the Order,  
17 as far as it goes. However, I would allow respondent to also fill  
18 that area westerly of I-5.

19  
20 W. A. Gissberg  
21 W. A. GISSBERG, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
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